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State Department review completed



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THE FOREIGN SERVICE
OF THE
UNITED STATES OF AMERICA

Gen. Counsel
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No. 455

Bern, October 20, 1949

L. B. Houston

ACTION
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Subject: Arrest and expulsion of Netherlands
tax agents for carrying on official
investigations in Switzerland.

W. L. Plumb

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The Minister has the honor to refer to an incident provoked recently by the activities in Switzerland of three officials of the Netherlands Ministry of Finance who had come to Lucerne to question a Netherlands citizen with regard to certain tax matters. The incident was considered in Switzerland to be important enough to justify deliberation by the Federal Council and wide press coverage and comment. The facts are reported to the Department not only for this reason but because the affair is believed to have considerable bearing on the activity of United States Government agents which has been in the past and may in the future be carried out in Switzerland. For this reason, it is suggested that the Department may wish to circulate the information among other interested government departments.

A Dutch businessman by the name of Gerritsen who has resided in Switzerland off and on for the last ten years is presently in litigation with the tax authorities of the Netherlands. Three agents of the Netherlands Ministry of Finance came to Switzerland under official orders on October 6, 1949 and proceeded during the days of October 6th and 7th to subject Gerritsen to long and severe questioning.

During this time Gerritsen answered all the agents' interrogatories and signed a written copy of his answers. On October 10th, after having left Switzerland for a short interval, the agents returned and made ready to continue their interrogation. At this time, however, Gerritsen's lawyer brought a complaint against the officials under Articles 271 and 273 of the Swiss Penal Code. (Article 271 prohibits the carrying out on Swiss territory, without Swiss permission, activities pertaining to a public officer; Article 273 prohibits the giving and receiving in Switzerland of manufacturing or business secrets in order to put them at the disposal of a foreign government. An exposé of these provisions of the Swiss Penal Code was submitted to the Department under cover of the Legation's Despatch No. 203, dated April 26, 1949.)

As it appeared that the three Netherlands officials had acted without applying for or receiving the authorization of the competent Swiss officials, they were arrested and put in jail, and the Federal Council assumed jurisdiction over the case in accordance with the provisions of the Federal Code of Penal Procedure.

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The Federal Council has now determined that no prosecution of the case will be carried out but that the three Netherlands officials will be expelled from Switzerland immediately, and all the papers connected with their interrogation confiscated. It was explained at a press conference of the Federal Council which took place following this determination that although the action of the Netherlands officials constituted a violation of Swiss sovereignty, and was therefore regarded by the Swiss Confederation as a very grave matter, there were certain mitigating circumstances which justified the Federal Council's decision not to pursue the matter beyond the expulsion of the agents in question. It was noted in the first place that the agents had acted under the direct authority of their Ministry and in ignorance that their contemplated activity was illegal under Swiss law. Furthermore, the Netherlands Legation at Bern had presented apologies on behalf of its government and had assured the Swiss Federal Political Department that an inquiry would be made in the Netherlands for the purpose of carrying out appropriate disciplinary action and preventing such occurrences in the future.

To the above account the Legation adds the following comment with regard to Articles 271 and 273 of the Swiss Penal Code:

1) The activities proscribed in these two articles (performing functions of a public officer, and giving or receiving manufacturing or business secrets) may be carried out on Swiss territory provided they are authorized by the Swiss authorities. In the case under review it is believed that such authorization would not have been granted even if it had been requested at the outset. At the same time, it is possible that inquiries contemplated by officials of other countries may be permitted by the Swiss authorities when they are obviously in the Swiss public interest. If, however, the persons contemplating such inquiries proceeded to make them without proper authorization from the Swiss authorities, they would undoubtedly lay themselves open to charges under the above-cited articles of the Swiss Penal Code regardless of the nature of their inquiry or the means by which they expected to carry it out.

2) It may be further pointed out that the Swiss authorities make no distinction, in practice, between an informal interview for the purpose of ascertaining information that might be directly or indirectly used in litigation in a foreign country, and the formal taking of testimony for such purpose. They therefore hold that any interrogations of any nature whatsoever which are carried out in Switzerland by representatives of foreign governments without proper authorization are in usurpation of the functions of Swiss officials, contrary to the provisions of Article 271 of the Code.

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